

Presidential Documents

Title 3—

The President

Executive Order 14105 of August 9, 2023

Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), and section 301 of title 3, United States Code,

I, JOSEPH R. BIDEN JR., President of the United States of America, find that countries of concern are engaged in comprehensive, long-term strategies that direct, facilitate, or otherwise support advancements in sensitive technologies and products that are critical to such countries' military, intelligence, surveillance, or cyber-enabled capabilities. Moreover, these countries eliminate barriers between civilian and commercial sectors and military and defense industrial sectors, not just through research and development, but also by acquiring and diverting the world's cutting-edge technologies, for the purposes of achieving military dominance. Rapid advancement in semiconductors and microelectronics, quantum information technologies, and artificial intelligence capabilities by these countries significantly enhances their ability to conduct activities that threaten the national security of the United States. Advancements in sensitive technologies and products in these sectors will accelerate the development of advanced computational capabilities that will enable new applications that pose significant national security risks, such as the development of more sophisticated weapons systems, breaking of cryptographic codes, and other applications that could provide these countries with military advantages.

As part of this strategy of advancing the development of these sensitive technologies and products, countries of concern are exploiting or have the ability to exploit certain United States outbound investments, including certain intangible benefits that often accompany United States investments and that help companies succeed, such as enhanced standing and prominence, managerial assistance, investment and talent networks, market access, and enhanced access to additional financing. The commitment of the United States to open investment is a cornerstone of our economic policy and provides the United States with substantial benefits. Open global capital flows create valuable economic opportunities and promote competitiveness, innovation, and productivity, and the United States supports cross-border investment, where not inconsistent with the protection of United States national security interests. However, certain United States investments may accelerate and increase the success of the development of sensitive technologies and products in countries that develop them to counter United States and allied capabilities.

I therefore find that advancement by countries of concern in sensitive technologies and products critical for the military, intelligence, surveillance, or cyber-enabled capabilities of such countries constitutes an unusual and extraordinary threat to the national security of the United States, which has its source in whole or substantial part outside the United States, and that certain United States investments risk exacerbating this threat. I hereby declare a national emergency to deal with this threat.

Accordingly, I hereby order:

Section 1. Notifiable and Prohibited Transactions. (a) To assist in addressing the national emergency declared in this order, the Secretary of the Treasury (Secretary), in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant executive departments and agencies (agencies), shall issue, subject to public notice and comment, regulations that require United States persons to provide notification of information relative to certain transactions involving covered foreign persons (notifiable transactions) and that prohibit United States persons from engaging in certain other transactions involving covered foreign persons (prohibited transactions).

(b) The regulations issued under this section shall identify categories of notifiable transactions that involve covered national security technologies and products that the Secretary, in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies, determines may contribute to the threat to the national security of the United States identified in this order. The regulations shall require United States persons to notify the Department of the Treasury of each such transaction and include relevant information on the transaction in each such notification.

(c) The regulations issued under this section shall identify categories of prohibited transactions that involve covered national security technologies and products that the Secretary, in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies, determines pose a particularly acute national security threat because of their potential to significantly advance the military, intelligence, surveillance, or cyber-enabled capabilities of countries of concern. The regulations shall prohibit United States persons from engaging, directly or indirectly, in such transactions.

Sec. 2. Duties of the Secretary. In carrying out this order, the Secretary shall, as appropriate:

(a) communicate with the Congress and the public with respect to the implementation of this order;

(b) consult with the Secretary of Commerce on industry engagement and analysis of notified transactions;

(c) consult with the Secretary of State, the Secretary of Defense, the Secretary of Commerce, the Secretary of Energy, and the Director of National Intelligence on the implications for military, intelligence, surveillance, or cyber-enabled capabilities of covered national security technologies and products and potential covered national security technologies and products;

(d) engage, together with the Secretary of State and the Secretary of Commerce, with allies and partners regarding the national security risks posed by countries of concern advancing covered national security technologies and products;

(e) consult with the Secretary of State on foreign policy considerations related to the implementation of this order, including but not limited to the issuance and amendment of regulations; and

(f) investigate, in consultation with the heads of relevant agencies, as appropriate, violations of this order or the regulations issued under this order and pursue available civil penalties for such violations.

Sec. 3. Program Development. Within 1 year of the effective date of the regulations issued under section 1 of this order, the Secretary, in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies, shall assess whether to amend the regulations, including whether to adjust the definition of “covered national security technologies and products” to add or remove technologies and products in the semiconductors and microelectronics, quantum information technologies, and artificial intelligence sectors. The Secretary, in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies, shall periodically review the effectiveness of the regulations thereafter.

Sec. 4. Reports to the President. Within 1 year of the effective date of the regulations issued under section 1 of this order and, as appropriate

but no less than annually thereafter, the Secretary, in coordination with the Secretary of Commerce and in consultation with the heads of other relevant agencies and the Director of the Office of Management and Budget, as appropriate, shall provide the President, through the Assistant to the President for National Security Affairs:

(a) to the extent practicable, an assessment of the effectiveness of the measures imposed under this order in addressing threats to the national security of the United States described in this order; advancements by the countries of concern in covered national security technologies and products critical for such countries' military, intelligence, surveillance, or cyber-enabled capabilities; aggregate sector trends evident in notifiable transactions and related capital flows in covered national security technologies and products, drawing on analysis provided by the Secretary of Commerce, the Director of National Intelligence, and the heads of other relevant agencies, as appropriate; and other relevant information obtained through the implementation of this order; and

(b) recommendations, as appropriate, regarding:

(i) modifications to this order, including the addition or removal of identified sectors or countries of concern, and any other modifications to avoid circumvention of this order and enhance its effectiveness; and

(ii) the establishment or expansion of other Federal programs relevant to the covered national security technologies and products, including with respect to whether any existing legal authorities should be used or new action should be taken to address the threat to the national security of the United States identified in this order.

Sec. 5. Reports to the Congress. The Secretary is authorized to submit recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 6. Official United States Government Business. Nothing in this order or the regulations issued under this order shall prohibit transactions for the conduct of the official business of the United States Government by employees, grantees, or contractors thereof.

Sec. 7. Confidentiality. The regulations issued by the Secretary under this order shall address the confidentiality of information or documentary material submitted pursuant to this order, consistent with applicable law.

Sec. 8. Additional Notifications and Prohibitions. (a) Any conspiracy formed to violate any regulation issued under this order is prohibited.

(b) Subject to the regulations issued under this order, any action that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order or any regulation issued under this order is prohibited.

(c) In the regulations issued under this order, the Secretary may prohibit United States persons from knowingly directing transactions if such transactions would be prohibited transactions pursuant to this order if engaged in by a United States person.

(d) In the regulations issued under this order, the Secretary may require United States persons to:

(i) provide notification to the Department of the Treasury of any transaction by a foreign entity controlled by such United States person that would be a notifiable transaction if engaged in by a United States person; and

(ii) take all reasonable steps to prohibit and prevent any transaction by a foreign entity controlled by such United States person that would be a prohibited transaction if engaged in by a United States person.

Sec. 9. Definitions. For purposes of this order:

(a) the term "country of concern" means a country or territory listed in the Annex to this order that the President has identified to be engaging in a comprehensive, long-term strategy that directs, facilitates, or otherwise

supports advancements in sensitive technologies and products that are critical to such country's military, intelligence, surveillance, or cyber-enabled capabilities to counter United States capabilities in a way that threatens the national security of the United States;

(b) the term "covered foreign person" means a person of a country of concern who or that is engaged in activities, as identified in the regulations issued under this order, involving one or more covered national security technologies and products;

(c) the term "covered national security technologies and products" means sensitive technologies and products in the semiconductors and microelectronics, quantum information technologies, and artificial intelligence sectors that are critical for the military, intelligence, surveillance, or cyber-enabled capabilities of a country of concern, as determined by the Secretary in consultation with the Secretary of Commerce and, as appropriate, the heads of other relevant agencies. Where applicable, "covered national security technologies and products" may be limited by reference to certain end-uses of those technologies or products;

(d) the term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(e) the term "person of a country of concern" means:

(i) any individual that is not a United States person and is a citizen or permanent resident of a country of concern;

(ii) any entity organized under the laws of a country of concern or with a principal place of business in a country of concern;

(iii) the government of each country of concern, including any political subdivision, political party, agency, or instrumentality thereof, or any person owned, controlled, or directed by, or acting for or on behalf of the government of such country of concern; or

(iv) any entity owned by a person identified in subsections (e)(i) through (e)(iii) of this section;

(f) the term "person" means an individual or entity;

(g) the term "relevant agencies" includes the Departments of State, Defense, Justice, Commerce, Energy, and Homeland Security, the Office of the United States Trade Representative, the Office of Science and Technology Policy, the Office of the Director of National Intelligence, the Office of the National Cyber Director, and any other department, agency, or office the Secretary determines appropriate; and

(h) the term "United States person" means any United States citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States, including any foreign branches of any such entity, and any person in the United States.

Sec. 10. General Provisions. (a) The Secretary is authorized to take such actions and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order, including to:

(i) promulgate rules and regulations, including elaborating upon the definitions contained in section 9 of this order for purposes of the regulations issued under this order and further prescribing definitions of other terms as necessary to implement this order;

(ii) investigate and make requests for information relative to notifiable or prohibited transactions from parties to such transactions or other relevant persons at any time, including through the use of civil administrative subpoenas as appropriate;

(iii) nullify, void, or otherwise compel the divestment of any prohibited transaction entered into after the effective date of the regulations issued under this order; and

(iv) refer potential criminal violations of this order or the regulations issued under this order to the Attorney General.

(b) Notwithstanding any other provision of this order, the Secretary is authorized to exempt from applicable prohibitions or notification requirements any transaction or transactions determined by the Secretary, in consultation with the heads of relevant agencies, as appropriate, to be in the national interest of the United States.

(c) To the extent consistent with applicable law, the Secretary may redelegate any functions authorized hereunder within the Department of the Treasury. All agencies of the United States Government shall take all appropriate measures within their authority to carry out the provisions of this order.

(d) If any provision of this order, or the application of any provision of this order to any person or circumstance, is held to be invalid, the remainder of this order and its application to any other person or circumstance shall not be affected thereby.

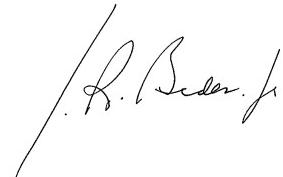
(e) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(f) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(g) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to read "R. Biden, Jr.", is written over a diagonal line.

THE WHITE HOUSE,
August 9, 2023.

Annex

The People's Republic of China

The Special Administrative Region of Hong Kong

The Special Administrative Region of Macau

[FR Doc. 2023-17449
Filed 8-10-23; 11:15 a.m.]
Billing code 3395-F3-C